

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ANDRELLA KING,

Plaintiff,

v.

BAYER CORPORATION,

Defendant.

05 - 11714 RCL

RBE MS
Civil Action No.**NOTICE OF REMOVAL**

TO: The Honorable Judges of this Court

Bayer Corporation ("Bayer"), defendant above-named, gives notice, in accordance with 28 U.S.C. § 1446(a), of the removal of this case from the Superior Court of Massachusetts for the County of Middlesex, in which court the case was commenced on or about July 28, 2005, by the filing of a Complaint, docketed at Civil No. 05-2614. Bayer is filing this Notice of Removal within 30 days of the date of filing of this action. A copy of the Complaint is attached to this Notice. No other process, pleadings, or orders have been served upon Bayer.

Statement of Grounds for Removal. Plaintiff is a citizen of the Commonwealth of Massachusetts. Complaint ¶ 1. Plaintiff correctly identifies Bayer in the Complaint as having a principal place of business in the State of Pennsylvania. Complaint ¶ 2. Bayer is also an Indiana corporation. See Exhibit A, Attachment 1. Because Bayer is a citizen of a State other than Massachusetts, complete diversity is present. See 28 U.S.C. 1332(c)(1).

{K0308490.1}

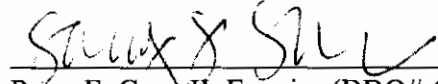
RECEIPT # 66339
AMOUNT \$ 250
SUMMONS ISSUED N/A
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. ROW
DATE 8/17/05

Plaintiff's Complaint does not request damages in a specific amount, but the allegations in the Complaint make clear that she is seeking a sum in excess of \$75,000 in her Complaint. She alleges that she was wrongfully discharged effective September 25, 2003. *See* Complaint ¶¶ 14-15, 21-24. The Complaint seeks to recover "emotional distress, lost wages and other damages," including "pain and suffering" and punitive damages. *See* Complaint ¶¶ 20, 22, 24 and WHEREFORE clause on p. 3. Given that plaintiff's base salary at the time of her discharge was \$62,530, *see* Exhibit A, Attachment 2, and that she has been discharged now for over 22 months, the requested back pay alone would exceed the jurisdictional threshold. This Court may examine similar cases within the jurisdiction in determining whether a plaintiff could recover damages beyond the jurisdictional amount, *see Stewart v. Tupperware Corp.*, 356 F.3d 335, 339 (1st Cir. 2004), and it has been recognized that cases involving claims of intentional employment discrimination within the First Circuit can lead to compensatory and/or punitive damages awards in excess of \$75,000. *See Bernier v. Unicco Service Co.*, 2005 U.S. Dist. LEXIS 2330 *2-3 (D. Me. Feb. 7, 2005) (citing *Quint v. A.E. Staley Mfg. Co.*, 172 F.3d 1 (1st Cir. 1999); *Hogan v. Bango & Aroostook R.R. Co.*, 61 F.3d 1034 (1st Cir. 1995)). Based upon these allegations, it is apparent from the face of the Complaint and from the materials included with this submission that the amount in controversy is in excess of the jurisdictional amount applicable to this Court.

For these reasons, subject matter jurisdiction is proper under the provisions of 28 U.S.C. § 1332, predicated upon diversity of citizenship and an amount in controversy in excess of \$75,000, exclusive of interest and costs.

Notice to State Court. Written notice of removal has been given to plaintiff through his attorney of record and a copy of this Notice of Removal is being filed simultaneously with the Superior Court for the County of Middlesex.

Respectfully submitted,
BAYER CORPORATION
By its attorneys,



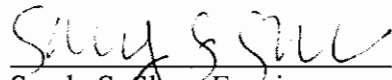
Peter F. Carr, II, Esquire (BBO# 600069)
Sandy S. Shen, Esquire (BBO# 646961)
Eckert Seamans Cherin & Mellott, LLC
One International Place, 18th Floor
Boston, MA 02110
Telephone: (617) 342-6800
Facsimile: (617) 342-6899

Dated: August 17, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal was served by first-class mail, postage prepaid, this 17th day of August, 2005 upon the following counsel:

David Green, Esquire
Alford & Bertrand, LLC
60 Arsenal Street
P.O. Box 322
Watertown, MA 02471-0322



Sandy S. Shen, Esquire

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
DOCKET NO: REQUESTED

05-2614

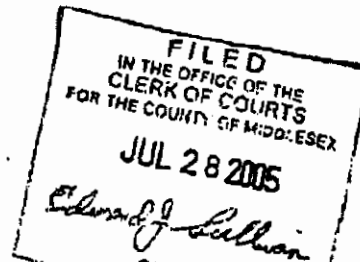
ANDRELLA KING
PLAINTIFF

V.

BAYER CORPORATION
DEFENDANT

COMPLAINT

PARTIES



937E000007/28/CIVIL	240.00
937E000007/28/CASUR CHARGE	15.00
937E000007/28/CSSUMMONS	5.00
937E000007/28/CSECC	20.00

1. The Plaintiff, Andrella King, is an adult resident of the Commonwealth of Massachusetts, residing at 179 Willis Avenue, Medford, Massachusetts.

2. The Defendant, Bayer Corporation is a corporation with substantial business contacts in the Commonwealth of Massachusetts, doing substantial business in the Commonwealth of Massachusetts, with a principal place of business located at 100 Bayer Road, Pittsburgh, Pennsylvania and a facility, located at 63 North Street, Medfield, Massachusetts.

FACTS

3. On or about January 20, 1997, Plaintiff began her employment with Defendant.
4. Beginning in late 2001 until her termination, Plaintiff was denied salary increases and bonuses due to the discriminatory practices of the Defendant's representatives.
5. The Defendant has failed to advance professional women of color.
6. The Defendant's representatives have engaged in an eighteen month campaign of denigration and the blatant distortion of Plaintiff's employment record to include the diminution of her professional achievements and ongoing attempts to tarnish her as the "scapegoat" for certain research and production failures within the company during the same time period.
7. On October 7, 2002, Plaintiff complained about the discriminatory practices of her direct supervisor to the Defendant's Human Resource Department. The only response from the Defendant has been warnings about Plaintiff's alleged professional shortcomings.

8. In approximately July 2003, Plaintiff's database access was limited, without any prior notification to her.
9. Such action severely limited Plaintiff's ability to perform her job duties.
10. Plaintiff was scheduled to receive a new computer in July 2003, which was delivered to Plaintiff's supervisor, Steven Andberg, instead of being delivered to her.
11. On information and belief, such action was taken so that Andberg could start monitoring her, which he started in July 2003.
12. None of the male or white employees were treated in such a manner.
13. On or about September 11, 2003, a complaint was filed at the Massachusetts Commission Against Discrimination.
14. On or about October 6, 2003, Plaintiff received a letter from Defendant, stating that Plaintiff was terminated, effective September 25, 2003.
15. Due to the close proximity of Plaintiff filing a discrimination complaint and her termination, it can be inferred that her termination was in retaliation for filing the complaint.
16. Such treatment by Defendant has caused Plaintiff to seek medical attention.
17. Although Defendant makes reference to a white comparator who also received a grade of "below expectations," that individual is currently employed by Defendant.
18. On or about a May 6, 2004 Plaintiff amended her complaint at the Massachusetts Commission Against Discrimination.

**COUNT I - VIOLATION OF MASSACHUSETTS ANTI-DISCRIMINATION
STATUTE, MASSACHUSETTS GENERAL LAW, CHAPTER 151B BY DEFENDANT,
BAYER CORPORATION**

(The Plaintiff reasserts the allegations set forth in paragraphs 1 - 18 above and incorporates the same herein by reference.)

19. Defendant, Bayer Corporation, discriminated against Plaintiff in the compensation or in the terms, conditions or privileges of employment.
20. Defendant, Bayer Corporation's violation of Massachusetts General Law, Chapter 151B has caused the Plaintiff to suffer emotional distress, lost wages and other damages, which will be proven at trial.

COUNT II - WRONGFUL DISCHARGE BY DEFENDANT, BAYER CORPORATION

(The Plaintiff reasserts the allegations set forth in paragraphs 1 - 20 above and incorporates the same herein by reference.)

21. Defendant, Bayer Corporation, terminated Plaintiff because of her race/ national origin, and/or gender.

22. As a result of Defendant, Bayer Corporation's wrongful discharge of Plaintiff, she was caused to suffer emotional distress, lost wages and other damages, which will be proven at trial.

COUNT III - BREACH OF IMPLIED CONTRACT OF EMPLOYMENT BY DEFENDANT, BAYER CORPORATION

(The Plaintiff reasserts the allegations set forth in paragraphs 1 - 22 above and incorporates the same herein by reference.)

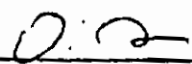
23. Defendant, Bayer Corporation, violated the duty of good faith and fair dealing implied in Plaintiff's employment contract or at will relationship when it terminated her employment.

24. As a result of Defendant, Bayer Corporation's, breach of their implied contract of employment, Plaintiff suffered emotional distress, lost wages and other damages, which will be proven at trial.

WHEREFORE, Plaintiff demands Judgment against the Defendant in the amount of her damages, including pain and suffering, punitive damages, costs and interest.

Plaintiff demands a jury trial on all counts.

By Plaintiff's Attorney,


DAVID GREEN, ESQUIRE
ALFORD & BERTRAND, LLC
60 Arsenal Street
Post Office Box 322
Watertown, MA 02471-0322
(617) 926-8800

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ANDRELLA KING

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DAVID GREEN (617) 926-8800
ALFORD & BERTRAND, LLC
60 Arsenal Street, Watertown, MA 02471

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

PETER F. CARR, II and SANDY S. SHEN
Attorneys (If Known) ECKERT SEAMANS CHERIN & MELLOTT, LLC
One International Place, 18th Floor
Boston, MA 02110

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property					

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify) _____
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC sec. 1332

VI. CAUSE OF ACTION

Brief description of cause:

PLAINTIFF ALLEGES PERSONAL INJURY ARISING OUT OF EMPLOYMENT DISCRIMINATION

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

AUGUST 17, 2005

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Andreella King v. Bayer Corporation

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Peter F. Carr, IIADDRESS Eckert Seamans Cherin & Mellott, LLC, One International Place, 18th Floor
Boston, MA 02110
TELEPHONE NO. (617) 342-6800